

*P.L. 107-279, Signed by President Bush November 5, 2002, which amended P.L. 107-110, Signed by President Bush January 8, 2002*

## TITLE III — NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

### **SEC. 301. SHORT TITLE.**

This title may be referred to as the "National Assessment of Educational Progress Authorization Act".

### **SEC. 302. NATIONAL ASSESSMENT GOVERNING BOARD.**

1. ESTABLISHMENT- There is established the National Assessment Governing Board (hereafter in this title referred to as the 'Assessment Board'), which shall formulate policy guidelines for the National Assessment (carried out under section 303).
2. MEMBERSHIP
  1. APPOINTMENT AND COMPOSITION- The Assessment Board shall be appointed by the Secretary and be composed as follows:
    1. Two Governors, or former Governors, who shall not be members of the same political party.
    2. Two State legislators, who shall not be members of the same political party.
    3. Two chief State school officers.
    4. One superintendent of a local educational agency.
    5. One member of a State board of education.
    6. One member of a local board of education.
    7. Three classroom teachers representing the grade levels at which the National Assessment is conducted.
    8. One representative of business or industry.

9. Two curriculum specialists.
  10. Three testing and measurement experts, who shall have training and experience in the field of testing and measurement.
  11. One nonpublic school administrator or policymaker.
  12. Two school principals, of whom one shall be an elementary school principal and one shall be a secondary school principal.
  13. Two parents who are not employed by a local, State or Federal educational agency.
  14. Two additional members who are representatives of the general public, and who may be parents, but who are not employed by a local, State, or Federal educational agency.
2. **DIRECTOR OF THE INSTITUTE OF EDUCATION SCIENCES-** The Director of the Institute of Education Sciences shall serve as an ex officio, nonvoting member of the Assessment Board.
  3. **BALANCE AND DIVERSITY-** The Secretary and the Assessment Board shall ensure at all times that the membership of the Assessment Board reflects regional, racial, gender, and cultural balance and diversity and that the Assessment Board exercises its independent judgment, free from inappropriate influences and special interests.

### 3. TERMS

1. **IN GENERAL-** Terms of service of members of the Assessment Board shall be staggered and may not exceed a period of 4 years, as determined by the Secretary.
2. **SERVICE LIMITATION-** Members of the Assessment Board may serve not more than two terms.
3. **CHANGE OF STATUS-** A member of the Assessment Board who changes status under subsection (b) during the term of the appointment of the member may continue to serve as a member until the expiration of such term.
4. **CONFORMING PROVISION-** Members of the Assessment Board previously granted 3 year terms, whose terms are in effect on the date of enactment of the Department of Education Appropriations Act, 2001, shall have their terms extended by 1 year.

#### 4. VACANCIES-

##### 1. IN GENERAL

1. ORGANIZATIONS- The Secretary shall appoint new members to fill vacancies on the Assessment Board from among individuals who are nominated by organizations representing the type of individuals described in subsection (b)(1) with respect to which the vacancy exists.
  2. NOMINATIONS- Each organization submitting nominations to the Secretary with respect to a particular vacancy shall nominate for such vacancy six individuals who are qualified by experience or training to fill the particular Assessment Board vacancy.
  3. MAINTENANCE OF ASSESSMENT BOARD- The Secretary's appointments shall maintain the composition, diversity, and balance of the Assessment Board required under subsection (b).
2. ADDITIONAL NOMINATIONS- The Secretary may request that each organization described in paragraph (1)(A) submit additional nominations if the Secretary determines that none of the individuals nominated by such organization have appropriate knowledge or expertise.

#### 5. DUTIES-

##### 1. IN GENERAL- In carrying out its functions under this section the Assessment Board shall--

1. select the subject areas to be assessed (consistent with section 303(b));
2. develop appropriate student achievement levels as provided in section 303(e);
3. develop assessment objectives consistent with the requirements of this section and test specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards;
4. develop a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public;
5. design the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys;

6. consistent with section 303, measure student academic achievement in grades 4, 8, and 12 in the authorized academic subjects;
7. develop guidelines for reporting and disseminating results;
8. develop standards and procedures for regional and national comparisons;
9. take appropriate actions needed to improve the form, content, use, and reporting of results of any assessment authorized by section 303 consistent with the provisions of this section and section 303; and
10. plan and execute the initial public release of National Assessment of Educational Progress reports.

The National Assessment of Educational Progress data shall not be released prior to the release of the reports described in subparagraph (J).

2. DELEGATION- The Assessment Board may delegate any of the Assessment Board's procedural and administrative functions to its staff.
3. ALL COGNITIVE AND NONCOGNITIVE ASSESSMENT ITEMS- The Assessment Board shall have final authority on the appropriateness of all assessment items.
4. PROHIBITION AGAINST BIAS- The Assessment Board shall take steps to ensure that all items selected for use in the National Assessment are free from racial, cultural, gender, or regional bias and are secular, neutral, and non-ideological.
5. TECHNICAL- In carrying out the duties required by paragraph (1), the Assessment Board may seek technical advice, as appropriate, from the Commissioner for Education Statistics and other experts.
6. REPORT- Not later than 90 days after an evaluation of the student achievement levels under section 303(e), the Assessment Board shall make a report to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate describing the steps the Assessment Board is taking to respond to each of the recommendations contained in such evaluation.

## 6. PERSONNEL-

1. IN GENERAL- In the exercise of its responsibilities, the Assessment Board shall be independent of the Secretary and the other offices and officers of the Department.

2. STAFF-

1. IN GENERAL- The Secretary may appoint, at the request of the Assessment Board, such staff as will enable the Assessment Board to carry out its responsibilities.
  2. TECHNICAL EMPLOYEES- Such appointments may include, for terms not to exceed 3 years and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, not more than six technical employees who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.
7. COORDINATION- The Commissioner for Education Statistics and the Assessment Board shall meet periodically--
1. to ensure coordination of their duties and activities relating to the National Assessment; and
  2. for the Commissioner for Education Statistics to report to the Assessment Board on the Department's actions to implement the decisions of the Assessment Board.
8. ADMINISTRATION- The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Assessment Board, other than sections 10, 11, and 12 of such Act.

***SEC. 303. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS.***

1. ESTABLISHMENT- The Commissioner for Education Statistics shall, with the advice of the Assessment Board established under section 302, carry out, through grants, contracts, or cooperative agreements with one or more qualified organizations, or consortia thereof, a National Assessment of Educational Progress, which collectively refers to a national assessment, State assessments, and a long-term trend assessment in reading and mathematics.
2. PURPOSE; STATE ASSESSMENTS-
  1. PURPOSE- The purpose of this section is to provide, in a timely manner, a fair and accurate measurement of student academic achievement and reporting of trends in such achievement in reading, mathematics, and other subject matter as specified in this section.
  2. MEASUREMENT AND REPORTING- The Commissioner for Education Statistics, in carrying out the measurement and reporting described in paragraph (1), shall--
    1. use a random sampling process which is consistent with relevant, widely accepted professional assessment standards and that produces data that are representative on a national and regional basis;
    2. conduct a national assessment and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in public and private elementary schools and secondary schools at least

once every 2 years, in grades 4 and 8 in reading and mathematics;

3. conduct a national assessment and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in public and private schools in reading and mathematics in grade 12 in regularly scheduled intervals, but at least as often as such assessments were conducted prior to the date of enactment of the No Child Left Behind Act of 2001;
4. to the extent time and resources allow, and after the requirements described in subparagraph (B) are implemented and the requirements described in subparagraph (C) are met, conduct additional national assessments and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in grades 4, 8, and 12 in public and private elementary schools and secondary schools in regularly scheduled intervals in additional subject matter, including writing, science, history, geography, civics, economics, foreign languages, and arts, and the trend assessment described in subparagraph (F);
5. conduct the reading and mathematics assessments described in subparagraph (B) in the same year, and every other year thereafter, to provide for 1 year in which no such assessments are conducted in between each administration of such assessments;
6. continue to conduct the trend assessment of academic achievement at ages 9, 13, and 17 for the purpose of maintaining data on long-term trends in reading and mathematics;
7. include information on special groups, including, whenever feasible, information collected, cross tabulated, compared, and reported by race, ethnicity, socioeconomic status, gender, disability and limited English proficiency; and
8. ensure that achievement data are made available on a timely basis following official reporting, in a manner that facilitates further analysis and that includes trend lines.

### 3. STATE ASSESSMENTS-

#### 1. IN GENERAL- The Commissioner for Education Statistics--

1. shall conduct biennial State academic assessments of student achievement in reading and mathematics in grades 4 and 8 as described in paragraphs (2)(B) and (2)(E);
2. may conduct the State academic assessments of student achievement in reading and mathematics in grade 12 as described in paragraph (2)(C);
3. may conduct State academic assessments of student achievement in grades 4, 8, and 12 as described in paragraph (2)(D); and
4. shall conduct each such State assessment, in each subject area and at each grade level, on a developmental basis until the Commissioner for Education

Statistics determines, as the result of an evaluation required by subsection (f), that such assessment produces high quality data that are valid and reliable.

2. AGREEMENT-

1. IN GENERAL- States participating in State assessments shall enter into an agreement with the Secretary pursuant to subsection (d)(3).
2. CONTENT- Such agreement shall contain information sufficient to give States full information about the process for decision-making (which shall include the consensus process used), on objectives to be tested, and the standards for random sampling, test administration, test security, data collection, validation, and reporting.

3. REVIEW AND RELEASE-

1. IN GENERAL- Except as provided in clause (ii), a participating State shall review and give permission for the release of results from any test of its students administered as a part of a State assessment prior to the release of such data. Refusal by a State to release its data shall not restrict the release of data from other States that have approved the release of such data.
2. SPECIAL RULE- A State participating in the biennial academic assessments of student achievement in reading and mathematics in grades 4 and 8 shall be deemed to have given its permission to release its data if the State has an approved plan under section 1111 of the Elementary and Secondary Education Act of 1965.

4. PROHIBITED ACTIVITIES-

1. IN GENERAL- The use of assessment items and data on any assessment authorized under this section by an agent or agents of the Federal Government to rank, compare, or otherwise evaluate individual students or teachers, or to provide rewards or sanctions for individual students, teachers, schools or local educational agencies is prohibited.
2. SPECIAL RULE- Any assessment authorized under this section shall not be used by an agent or agents of the Federal Government to establish, require, or influence the standards, assessments, curriculum, including lesson plans, textbooks, or classroom materials, or instructional practices of States or local educational agencies.
3. APPLICABILITY TO STUDENT EDUCATIONAL DECISIONS- Nothing in this section shall be construed to prescribe the use of any assessment authorized under this section for student promotion or graduation purposes.
4. APPLICABILITY TO HOME SCHOOLS- Nothing in this section shall be construed to affect home schools, whether or not a home school is treated as a home school or a private school under State law, nor shall any home schooled student be required to participate in any assessment referenced or authorized under this section.

5. REQUIREMENT- In carrying out any assessment authorized under this section, the Commissioner for Education Statistics, in a manner consistent with subsection (c)(3), shall--

1. use widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, and ensure that any academic assessment authorized under this section be tests that do not evaluate or assess personal or family beliefs and attitudes or publicly disclose personally identifiable information;
2. only collect information that is directly related to the appraisal of academic achievement, and to the fair and accurate presentation of such information; and
3. collect information on race, ethnicity, socioeconomic status, disability, limited English proficiency, and gender.

6. TECHNICAL ASSISTANCE- In carrying out any assessment authorized under this section, the Commissioner for Education Statistics may provide technical assistance to States, localities, and other parties.

### 3. ACCESS-

#### 1. PUBLIC ACCESS-

1. IN GENERAL- Except as provided in paragraph (3), parents and members of the public shall have access to all assessment data, questions, and complete and current assessment instruments of any assessment authorized under this section. The local educational agency shall make reasonable efforts to inform parents and members of the public about the access required under this paragraph.
2. TIMELINE- The access described in this paragraph shall be provided within 45 days of the date the request was made, in writing, and be made available in a secure setting that is convenient to both parties.
3. PROHIBITION- To protect the integrity of the assessment, no copy of the assessment items or assessment instruments shall be duplicated or taken from the secure setting.

#### 2. COMPLAINTS-

1. IN GENERAL- Parents and members of the public may submit written complaints to the National Assessment Governing Board.
2. FORWARDING OF COMPLAINTS- The National Assessment Governing Board shall forward such complaints to the Commissioner for Education Statistics, the Secretary of Education, and the State and local educational agency from within which the complaint originated within 30 days of receipt of such complaint.
3. REVIEW- The National Assessment Governing Board, in consultation with the Commissioner for Education Statistics, shall review such complaint and determine whether revisions are necessary and appropriate. As determined by such review, the



Assessment Board shall revise, as necessary and appropriate, the procedures or assessment items that have generated the complaint and respond to the individual submitting the complaint, with a copy of such response provided to the Secretary, describing any action taken, not later than 30 days after so acting.

4. REPORT- The Secretary shall submit a summary report of all complaints received pursuant to subparagraph (A) and responses by the National Assessment Governing Board pursuant to subparagraph (C) to the Chairman of the House Committee on Education and the Workforce, and the Chairman of the Senate Committee on Health, Education, Labor, and Pensions.

5. COGNITIVE QUESTIONS-

1. IN GENERAL- The Commissioner for Education Statistics may decline to make available through public means, such as posting on the Internet, distribution to the media, distribution through public agencies, or in response to a request under section 552 of title 5, United States Code, for a period, not to exceed 10 years after initial use, cognitive questions that the Commissioner for Education Statistics intends to reuse in the future.
2. EXTENSION- Notwithstanding clause (i), the Commissioner for Education Statistics may decline to make cognitive questions available as described in clause (i) for a period longer than 10 years if the Commissioner for Education Statistics determines such additional period is necessary to protect the security and integrity of long-term trend data.

3. PERSONALLY IDENTIFIABLE INFORMATION-

1. IN GENERAL- The Commissioner for Education Statistics shall ensure that all personally identifiable information about students, their academic achievement, and their families, and that information with respect to individual schools, remains confidential, in accordance with section 552a of title 5, United States Code.
2. PROHIBITION- The Assessment Board, the Commissioner for Education Statistics, and any contractor or subcontractor shall not maintain any system of records containing a student's name, birth information, Social Security number, or parents' name or names, or any other personally identifiable information.
4. PENALTIES- Any unauthorized person who knowingly discloses, publishes, or uses assessment questions, or complete and current assessment instruments of any assessment authorized under this section may be fined as specified in section 3571 of title 18, United States Code or charged with a class E felony.

4. PARTICIPATION-

1. VOLUNTARY PARTICIPATION- Participation in any assessment authorized under this section shall be voluntary for students, schools, and local educational agencies.
2. STUDENT PARTICIPATION- Parents of children selected to participate in any assessment authorized under this section shall be informed before the administration of any authorized

assessment, that their child may be excused from participation for any reason, is not required to finish any authorized assessment, and is not required to answer any test question.

3. STATE PARTICIPATION-

1. VOLUNTARY- Participation in assessments authorized under this section, other than reading and mathematics in grades 4 and 8, shall be voluntary.
2. AGREEMENT- For reading and mathematics assessments in grades 4 and 8, the Secretary shall enter into an agreement with any State carrying out an assessment for the State under this section. Each such agreement shall contain provisions designed to ensure that the State will participate in the assessment.
4. REVIEW- Representatives of State educational agencies and local educational agencies or the chief State school officer shall have the right to review any assessment item or procedure of any authorized assessment upon request in a manner consistent with subsection (c), except the review described in subparagraph (2)(C) of subsection (c) shall take place in consultation with the representatives described in this paragraph.

5. STUDENT ACHIEVEMENT LEVELS-

1. ACHIEVEMENT LEVELS- The National Assessment Governing Board shall develop appropriate student achievement levels for each grade or age in each subject area to be tested under assessments authorized under this section, except the trend assessment described in subsection (b)(2)(F).

2. DETERMINATION OF LEVELS-

1. IN GENERAL- Such levels shall--

1. be determined by--
  1. identifying the knowledge that can be measured and verified objectively using widely accepted professional assessment standards; and
  2. developing achievement levels that are consistent with relevant widely accepted professional assessment standards and based on the appropriate level of subject matter knowledge for grade levels to be assessed, or the age of the students, as the case may be.
2. NATIONAL CONSENSUS APPROACH- After the determinations described in subparagraph (A), devising a national consensus approach.
3. TRIAL BASIS- The achievement levels shall be used on a trial basis until the Commissioner for Education Statistics determines, as a result of an evaluation under

subsection (f), that such levels are reasonable, valid, and informative to the public.

4. STATUS- The Commissioner for Education Statistics and the Assessment Board shall ensure that reports using such levels on a trial basis do so in a manner that makes clear the status of such levels.
5. UPDATES- Such levels shall be updated as appropriate by the National Assessment Governing Board in consultation with the Commissioner for Education Statistics.
3. REPORTING- After determining that such levels are reasonable, valid, and informative to the public, as the result of an evaluation under subsection (f), the Commissioner for Education Statistics shall use such levels or other methods or indicators for reporting results of the National Assessment and State assessments.
4. REVIEW- The National Assessment Governing Board shall provide for a review of any trial student achievement levels under development by representatives of State educational agencies or the chief State school officer in a manner consistent with subsection (c), except the review described in paragraph (2)(C) of such subsection shall take place in consultation with the representatives described in this paragraph.

## 6. REVIEW OF NATIONAL AND STATE ASSESSMENTS-

### 1. REVIEW-

1. IN GENERAL- The Secretary shall provide for continuing review of any assessment authorized under this section, and student achievement levels, by one or more professional assessment evaluation organizations.
2. ISSUES ADDRESSED- Such continuing review shall address--
  1. whether any authorized assessment is properly administered, produces high quality data that are valid and reliable, is consistent with relevant widely accepted professional assessment standards, and produces data on student achievement that are not otherwise available to the State (other than data comparing participating States to each other and the Nation);
  2. whether student achievement levels are reasonable, valid, reliable, and informative to the public;-
  3. whether any authorized assessment is being administered as a random sample and is reporting the trends in academic achievement in a valid and reliable manner in the subject areas being assessed;
  4. whether any of the test questions are biased, as described in section 302(e)(4); and
  5. whether the appropriate authorized assessments are measuring, consistent with this section, reading ability and mathematical knowledge.
2. REPORT- The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, the President, and the Nation on the findings and recommendations of such

reviews.

3. USE OF FINDINGS AND RECOMMENDATIONS- The Commissioner for Education Statistics and the National Assessment Governing Board shall consider the findings and recommendations of such reviews in designing the competition to select the organization, or organizations, through which the Commissioner for Education Statistics carries out the National Assessment.

#### 7. COVERAGE AGREEMENTS-

1. DEPARTMENT OF DEFENSE SCHOOLS- The Secretary and the Secretary of Defense may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment elementary schools and secondary schools operated by the Department of Defense.
2. BUREAU OF INDIAN AFFAIRS SCHOOLS- The Secretary and the Secretary of the Interior may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment schools for Indian children operated or supported by the Bureau of Indian Affairs.

### **SEC. 304. DEFINITIONS.**

In this title:

1. The term "Director" means the Director of the Institute of Education Sciences.
2. The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

### **SEC. 305. AUTHORIZATION OF APPROPRIATIONS.**

1. In General - There are authorized to be appropriated-
  1. for fiscal year 2003-
    1. \$4,600,000 to carry out section 302, as amended by section 401 of this Act (relating to the National Assessment Governing Board); and
    2. \$107,500,000 to carry out section 303, as amended by section 401 of this Act (relating to the National Assessment of Educational Progress); and (2) such sums as may be necessary for each of the 5 succeeding fiscal years to carry out sections 302 and 303, as amended by section 401 of this Act.
2. AVAILABILITY-Amounts made available under this section shall remain available until expended.